

§ 31.3406(b)(3)-1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) *Section 6041 and 6041A(a) payments subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6041 (relating to information reporting of rents, commissions, nonemployee compensation, etc.) or a payment that is required to be reported under section 6041A(a) (relating to information reporting of payments to nonemployees for services) is a reportable payment for purposes of section 3406. See paragraph (b) of this section for an exception concerning payments aggregating less than \$600. See § 31.6051-4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding—(1) In general.* The amount of a payment described in paragraph (a) of this section subject to withholding under section 3406 is the amount subject to reporting under section 6041 or section 6041A(a).

(2) *Net commissions.* Withholding under section 3406 does not apply to net commissions paid to unincorporated special agents with respect to insurance policies that are subject to reporting under section 6041, provided that no cash is actually paid by the payor to the special agent.

(3) *Payments aggregating \$600 or more for the calendar year—(i) In general.* A payment is a reportable payment under paragraph (a) of this section only if the aggregate amount of the current payment and all previous payments to the payee during the calendar year aggregate \$600 or more. The amount subject to withholding is the entire amount of the payment that causes the total amount paid to the payee to equal \$600 or more and the amount of any subsequent payments made to the payee during the calendar year. This paragraph (b)(3)(i) does not apply to gambling winnings (as provided in § 31.3406(g)-2(e)(1)).

(ii) *Exceptions—(A) The \$600 aggregation rule.* The \$600 aggregation rule of paragraph (b)(3)(i) of this section does not apply if the payor was required to make an information return under section 6041 or 6041A(a) for the preceding

calendar year with respect to payments to the payee, or the payor was required to withhold under section 3406 during the preceding calendar year with respect to payments to the payee that were reportable under section 6041 or 6041A(a).

(B) *Determination of whether payments aggregate \$600 or more.* In determining whether payments to a payee aggregate \$600 or more during a calendar year for purposes of withholding under section 3406, the payor must aggregate only payments of the same kind made to the same payee. For this purpose, payments are of the same kind if they are of the same type, regardless of whether they are reportable under the same section. However, a payor with different paying departments making reportable payments of the same kind is not required to aggregate payments made by all those departments unless it is the payor's customary method to aggregate those payments. A payor may, in its discretion, aggregate—

(1) Payments not of the same kind to the same payee, reportable under either section 6041 or 6041A(a); and

(2) Payments reportable under section 6041 with payments reportable under section 6041A(a).

[T.D. 8637, 60 FR 66117, Dec. 21, 1995]

§ 31.3406(b)(3)-2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) *Transactions subject to backup withholding.* A payment of a kind, and to a payee, that any broker (as defined in section 6045(c) and § 1.6045-1(a)(1) of this chapter) or any barter exchange (as defined in section 6045(c) and § 1.6045-1(a)(4) of this chapter) is required to report under section 6045 is a reportable payment for purposes of section 3406. See § 31.6051-4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding—(1) In general.* The amount subject to withholding under section 3406 is the amount subject to reporting under section 6045. The amount subject to withholding with respect to broker reporting is the amount of gross proceeds (as determined under § 1.6045-